



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Health Care Authority, Washington Apple Health

☒ **Preproposal Statement of Inquiry was filed as WSR 14-08-048; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR _____; or**
☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR _____**
☐ **Continuance of WSR _____**

WAC 182-531-1675 Gender Dysphoria Treatment Program
WAC 182-531-0200 Physician-related and health care professional services requiring prior authorization
WAC 182-501-0070 Health Care Coverage – Noncovered Services

Hearing location(s):

Health Care Authority
Cherry Street Plaza Building; Sue Crystal Conf Rm, CSP 106B
626 - 8th Avenue, Olympia WA 98504

Metered public parking is available street side around building. A map is available at:

http://www.hca.wa.gov/documents/directions_to_csp.pdf
or directions can be obtained by calling: 360-725-1000

Date: May 5, 2015 Time: 10:00 a.m.

Submit written comments to:

Name: HCA Rules Coordinator
Address: PO Box 45504, Olympia WA, 98504-5504
Delivery: 626 – 8th Avenue, Olympia WA 98504
e-mail: arc@hca.wa.gov
fax: (360)586-9727

by (date) 5:00 p.m. on May 5, 2015

Assistance for persons with disabilities: Contact

Kelly Richters by April 27, 2015

TTY (800) 848-5429 or (360) 725-1307 or e-mail:
kelly.richters@hca.wa.gov

Date of intended adoption: Not sooner than May 6, 2015
(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Based on current medical evidence, HCA is removing gender reassignment surgery from the noncovered health care services list and establishing coverage policy in WAC.

Reasons supporting proposal: See "Purpose" statement above

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Statute being implemented: RCW 41.05.021, 41.05.160

Is rule necessary because of a:

Federal Law? ☐ Yes ☒ No
Federal Court Decision? ☐ Yes ☒ No
State Court Decision? ☐ Yes ☒ No
If yes, CITATION:

DATE

April 1, 2015

NAME (type or print)

Jason R. P. Crabbe

SIGNATURE

TITLE

HCA Rules Coordinator

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

DATE: April 01, 2015

TIME: 10:52 AM

WSR 15-08-100

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

N/A

Name of proponent: Health Care Authority

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|--------------------|--------------|--|----------------|
| Drafting..... | Amy Emerson | P.O. Box 42716, Olympia, WA 98504-2716 | (360) 725-1348 |
| Implementation.... | Gail Kreiger | P.O. Box 45506, Olympia, Wa 98504-5506 | (360) 725-1681 |
| Enforcement..... | Gail Kreiger | P.O. Box 45506, Olympia, Wa 98504-5506 | (360) 725-1681 |

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

☐ Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared.

The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain:

RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

WAC 182-501-0070 Health care coverage—Noncovered services. (1)

The medicaid agency or its designee does not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The agency or its designee does not pay for any ancillary health care service(s) provided in association with a noncovered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanopractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4);

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

~~(i) ((Gender reassignment surgery and any surgery related to transsexualism, gender identity disorders, and body dysmorphism, and related health care services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;~~

~~(j))~~ Hair transplants, epilation (hair removal), and electrolysis;

~~((k))~~ (j) Marital counseling;

~~((l))~~ (k) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

~~((m))~~ (l) Nonmedical equipment;

~~((n))~~ (m) Penile implants;

~~((o))~~ (n) Prosthetic testicles;

~~((p))~~ (o) Psychiatric sleep therapy;

~~((q))~~ (p) Subcutaneous injection filling;

~~((r))~~ (q) Tattoo removal;
~~((s))~~ (r) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;
~~((t))~~ (s) Upright magnetic resonance imaging (MRI); and
~~((u))~~ (t) Vehicle purchase - New or used vehicle.

(5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:

- (a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;
- (b) Dental services as described in chapter 182-535 WAC;
- (c) Durable medical equipment as described in chapter 182-543 WAC;
- (d) Hearing care services as described in chapter 182-547 WAC;
- (e) Home health services as described in WAC 182-551-2130;
- (f) Hospital services as described in WAC 182-550-1600;
- (g) Health care professional services as described in WAC 182-531-0150;
- (h) Prescription drugs as described in chapter 182-530 WAC;
- (i) Vision care hardware for clients twenty years of age and younger as described in chapter 182-544 WAC; and
- (j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

- (a) A statement of the action the agency or its designee intends to take;
- (b) Reference to the specific WAC provision upon which the denial is based;
- (c) Sufficient detail to enable the recipient to:
 - (i) Learn why the agency's or its designee's action was taken; and
 - (ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.
- (d) The specific factual basis for the intended action; and
- (e) The following information:
 - (i) Administrative hearing rights;
 - (ii) Instructions on how to request the hearing;
 - (iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;
 - (iv) Instructions on how to request an exception to rule (ETR);
 - (v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and
 - (vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

WAC 182-531-0200 Physician-related and health care professional services requiring prior authorization. (1) The medicaid agency requires **prior authorization** for certain services. Prior authorization includes **expedited prior authorization (EPA)** and **limitation extension (LE)**. See WAC 182-501-0165.

(2) The EPA process is designed to eliminate the need for telephone prior authorization for selected admissions and procedures.

(a) The provider must create an authorization number using the process explained in the medicaid agency's physician-related billing instructions.

(b) Upon request, the provider must provide supporting clinical documentation to the medicaid agency showing how the authorization number was created.

(c) Selected nonemergency admissions to contract hospitals require EPA. These are identified in the medicaid agency billing instructions.

(d) Procedures allowing expedited prior authorization include, but are not limited to, the following:

(i) Reduction mammoplasties/mastectomy for gynecomastia;

(ii) Strabismus surgery for clients eighteen years of age and older;

(iii) Meningococcal vaccine;

(iv) Placement of drug eluting stent and device;

(v) Cochlear implants for clients twenty years of age and younger;

(vi) Hyperbaric oxygen therapy;

(vii) Visual exam/refraction for clients twenty-one years of age and older;

(viii) Blepharoplasties; and

(ix) Neuropsychological testing for clients sixteen years of age and older.

(3) The medicaid agency evaluates new technologies under the procedures in WAC 182-531-0550. These require prior authorization.

(4) Prior authorization is required for the following:

(a) Abdominoplasty;

(b) All inpatient hospital stays for **acute physical medicine and rehabilitation (PM&R)**;

(c) Unilateral cochlear implants for clients twenty years of age and younger (refer to WAC 182-531-0375);

(d) Diagnosis and treatment of eating disorders for clients twenty-one years of age and older;

(e) Osteopathic manipulative therapy in excess of the medicaid agency's published limits;

(f) Panniculectomy;

(g) Bariatric surgery (see WAC 182-531-1600); ((and))

(h) Vagus nerve stimulator insertion, which also:

(i) For coverage, must be performed in an inpatient or outpatient hospital facility; and

(ii) For reimbursement, must have the invoice attached to the claim.

(i) Osseointegrated/bone anchored hearing aids (BAHA) for clients twenty years of age and younger;

(j) Removal or repair of previously implanted BAHA or cochlear device for clients twenty one years of age and older when medically necessary; and

(k) Gender reassignment surgery (see WAC 182-531-1675).

(5) All hysterectomies performed for medical reasons may require prior authorization, as explained in subsection (2) of this section.

(a) Hysterectomies may be performed without prior authorization in either of the following circumstances:

(i) The client has been diagnosed with cancer(s) of the female reproductive organs; and/or

(ii) A hysterectomy is needed due to trauma.

(b) The agency reimburses all attending providers for a hysterectomy procedure only when the provider submits an accurately completed agency-approved consent form with the claim for reimbursement.

(6) The medicaid agency may require a second opinion and/or consultation before authorizing any elective surgical procedure.

(7) Children six years of age and younger do not require authorization for hospitalization.

NEW SECTION

WAC 182-531-1675 Washington apple health—Gender dysphoria treatment program. (1) Overview of the gender dysphoria treatment program.

(a) The medicaid agency covers the following medically necessary services, consistent with the services identified as covered in Title 182 WAC, to treat gender dysphoria:

(i) Medical services including, but not limited to:

(A) Presurgical and postsurgical hormone therapy;

(B) Prepuberty suppression therapy;

(ii) Mental health services; and

(iii) Surgical services including, but not limited to:

(A) Anesthesia;

(B) Labs;

(C) Pathology;

(D) Radiology;

(E) Hospital; and

(F) Physician services.

(b) The agency's gender dysphoria treatment program has four stages. Prior authorization is required for stage four only. Any medicaid provider can refer a client to stage one. The stages are as follows:

(i) Stage one - Initial assessment and diagnosis of gender dysphoria;

(ii) Stage two - Mental health and medical treatment;

(iii) Stage three - Presurgical requirements; and

(iv) Stage four - Gender reassignment surgery.

(c) All services under this program must be delivered by providers who meet the qualifications in subsection (2) of this section.

(d) The agency evaluates requests for noncovered services as an exception to rule under the provisions of WAC 182-501-0160.

(e) If gender dysphoria treatment is requested or prescribed for clients age twenty-one and younger under the early and periodic screening, diagnosis, and treatment (EPSDT) program, the agency evaluates it as a covered service under the EPSDT program's requirement that the service is medically necessary, safe, effective, and not experimental.

(f) The agency covers transportation services under the provisions of chapter 182-546 WAC.

(2) Qualified health care providers for gender dysphoria treatment.

(a) Providers must meet the qualifications outlined in chapter 182-502 WAC.

(b) Each provider must be recognized as an agency-designated center of excellence (COE). COE is defined in WAC 182-531-0050. To be a COE, all providers must complete an agency form attesting that they:

(i) Possess knowledge about current community, advocacy, and public policy issues relevant to transgender people and their families (sexuality, sexual health concerns, and the assessment and treatment of sexual disorders is preferred);

(ii) Endorse the *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7* as developed by the World Professional Association for Transgender Health (WPATH); and

(iii) Agree to provide services consistent with this section.

(c) Diagnosis in stage one must be made by a COE provider who is a board-certified physician, a psychologist, a board-certified psychiatrist, or a licensed advanced registered nurse practitioner (ARNP).

(d) Mental health professionals who provide stage two mental health treatment described in subsection (4)(c) of this section, or who perform the psychosocial evaluation described in subsection (5)(a)(iii) of this section must:

(i) Meet the requirements described in WAC 182-531-1400;

(ii) Sign an agency form attesting that they:

(A) Are competent in using the *Diagnostic Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) and the *International Classification of Diseases* for diagnostic purposes;

(B) Are able to recognize and diagnose coexisting mental health conditions and to distinguish these from gender dysphoria;

(C) Have completed supervised training in psychotherapy or counseling;

(D) Are knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria; and

(E) Have completed continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a mental health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria; and

(iii) Be a board-certified psychiatrist, a psychologist, or a licensed:

(A) Psychiatric ARNP;

(B) Psychiatric mental health nurse practitioner;

(C) Mental health counselor;

(D) Independent clinical social worker;

(E) Advanced social worker; or

(F) Marriage and family therapist.

(e) Any surgeon who performs gender reassignment surgery must:

(i) Be a board-certified:

(A) Urologist;

(B) Gynecologist;

(C) Plastic surgeon;

(D) Cosmetic surgeon; or

(E) General surgeon;

(ii) Have a valid medical license in the state where the surgery is performed; and

(iii) Attest to specialized abilities in genital reconstructive techniques and produce documentation showing that they have received supervised training with a more experienced surgeon.

(f) Any medical provider managing hormone therapy, androgen suppression, or puberty suppression for clients diagnosed with gender dysphoria must:

(i) Be either of the following:

(A) A licensed, board certified:

(I) Endocrinologist;

(II) Family practitioner;

(III) Internist;

(IV) Obstetrician/gynecologist;

(V) Pediatrician;

(VI) Naturopath; or

(B) A licensed ARNP or a licensed physician's assistant; and
(ii) Sign an agency form attesting to specialized abilities managing hormone therapy in treating gender dysphoria. The specialized abilities may be proved by producing documentation showing supervised training with a more experienced physician, and attesting attendance at relevant professional meetings, workshops, or seminars.

(3) **Stage one - Initial assessment and diagnosis of gender dysphoria.** The purpose of stage one is to assess and diagnose the client, and refer the client to qualified providers. A health professional who meets the qualifications in subsection (2)(c) of this section must assess the client and:

(a) Confirm the diagnosis of gender dysphoria as defined by the *Diagnostic Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5);

(b) Determine the gender dysphoria is not the result of another mental or physical health condition, and refer the client to other specialists if other health conditions are indicated;

(c) Develop an individualized treatment plan for the client;

(d) Refer the client to qualified providers for the stage two services described in subsection (4) of this section; and

(e) Assist and support the client in navigating stage two and stage three requirements, and provide services consistent with WPATH guidelines and WAC 182-531-1675.

(4) **Stage two - Mental health and medical treatment.**

(a) Mental health and medical treatment are covered only after a health professional who meets the qualifications in subsection (2)(c) of this section has diagnosed or confirmed the diagnosis of gender dysphoria as defined by the DSM-5 criteria.

(b) Medical treatment in stage two is limited to androgen suppression, puberty suppression, continuous hormone therapy, and laboratory testing to monitor the safety of hormone therapy. Some of these prescriptions may be subject to prior authorization as required by pharmacy policy in chapter 182-530 WAC. Medical treatment must be prescribed by a COE provider who meets the requirements in subsection (2)(a), (b), and (f) of this section.

(c) The agency covers mental health treatment for the client and his or her spouse, parent, guardian, child, or person with whom the client has a child in common if the treatment is:

(i) Medically necessary;

(ii) Provided according to the provisions of WAC 182-531-1400; and

(iii) Provided by a health professional who meets the requirements in subsection (2)(a), (b), and (d) of this section.

(5) **Stage three - Presurgical requirements.**

(a) To proceed to stage four gender reassignment surgery, the client must:

(i) Be age eighteen or older.

(ii) Be competent to give consent for treatment and have this competency documented in clinical records.

(iii) Undergo a comprehensive psychosocial evaluation that must do all of the following:

(A) Be conducted by two mental health professionals for genital surgery and one mental health professional for chest surgery. These mental health professionals must meet the qualifications described in subsection (2)(d) of this section.

(B) Confirm the diagnosis of gender dysphoria, document that professionals performing the evaluation believe the client is a good can-

didate for gender reassignment surgery, and document that surgery is the next reasonable step in the client's care.

(C) Evaluate the client for the presence of coexisting behavioral health conditions (substance abuse problems, or mental health illnesses), which could prevent the client from participating in gender dysphoria treatment including, but not limited to, gender reassignment surgery and postsurgical care.

(D) Document that any coexisting behavioral health condition is adequately managed.

(b) The surgeon who will perform the gender reassignment surgery and who meets the qualifications outlined in subsection (2)(a), (b), and (e) of this section, must complete a presurgical consultation. When the presurgical consultation is completed, the surgeon must forward the report of the consultation to the other treatment team members.

(c) The client must have received continuous hormonal therapy as required by the treatment plan to meet treatment objectives. For exceptions, see subsection (5)(f)(vi) of this section.

(d) The client must have lived in a gender role congruent with the client's gender identity immediately preceding surgery as required by the treatment plan to meet treatment objectives. For exceptions, see subsection (5)(f)(vi) of this section.

(e) The client's medical record must document that the client met the requirements in subsection (5)(a) through (d) of this section.

(f) A member of the treatment team must write a comprehensive referral letter and submit it to the agency along with the prior authorization request for surgery. The contents of the comprehensive referral letter must include:

(i) Results of the client's psychosocial evaluation, as described in subsection (5)(a)(iii) of this section;

(ii) Documentation that any coexisting behavioral health condition is adequately managed;

(iii) A description of the relationship between the mental health professionals and the client, including the duration of the professional relationship, and the type of evaluation and therapy or counseling to date;

(iv) A brief description of the clinical justification supporting the client's request for surgery;

(v) An assessment and attestation that the provider believes the client is able to comply with the postoperative requirements, has the capacity to maintain lifelong changes, and will comply with regular follow up;

(vi) An explanation that the criteria for surgery described in subsection (5)(a) through (d) of this section have been met. If the criteria are not met, the letter must describe the clinical decision-making process so that medical necessity can be established;

(vii) A statement about the client's adherence to the medical and mental health treatment plan, including keeping scheduled appointments;

(viii) A description of the outcome of the client's hormonal therapy;

(ix) A copy of the client's signed informed consent, acknowledging the permanent impact on their reproductive capacity;

(x) A statement that all the members of the treatment team will be available to coordinate or provide postoperative care as needed;

(xi) A description of the surgical plan. See subsection (6)(d) and (e) of this section, covered and noncovered procedures. The description must:

(A) List all surgical procedures planned; and

(B) Provide a timeline of surgical stages if clinically indicated; and

(xii) Signatures from the following treatment team members:

(A) The two mental health professionals for genital surgery and one mental health professional for chest surgery who completed the responsibilities described in subsections (4)(c) and (5)(a)(iii) of this section;

(B) The medical provider who has managed the care;

(C) Any surgeon performing the procedures; and

(D) The client.

(6) Stage four - Gender reassignment surgery.

(a) The agency requires prior authorization for stage four. Subsection (5) of this section lists the documentation that is required to be submitted with the authorization request.

(b) If the client fails to complete all of the requirements in subsection (5) of this section, the agency will not authorize gender reassignment surgery unless the clinical decision-making process is provided in the comprehensive referral letter described in subsection (5)(f) of this section.

(c) A client preparing for gender reassignment surgery must be cared for by a treatment team consisting of:

(i) One of the mental health professionals described in subsection (2)(d) of this section, if mental health services are part of the treatment plan;

(ii) The medical provider who managed the medical care in stage two and stage three; and

(iii) Any surgeon performing the procedures.

(d) The agency covers the following surgical procedures in stage four:

(i) Bilateral mastectomy;

(ii) Cliteroplasty;

(iii) Colovaginoplasty;

(iv) Colpectomy;

(v) Genital surgery;

(vi) Genital electrolysis as required as part of the genital surgery;

(vii) Hysterectomy;

(viii) Labiaplasty;

(ix) Metoidioplasty;

(x) Orchiectomy;

(xi) Penectomy;

(xii) Phalloplasty;

(xiii) Placement of testicular prosthesis;

(xiv) Salpingo-oophorectomy;

(xv) Scrotoplasty;

(xvi) Urethroplasty;

(xvii) Vaginectomy; and

(xviii) Vaginoplasty.

(e) The agency does not cover the following surgical procedures in stage four:

(i) Abdominoplasty;

(ii) Blepharoplasty;

(iii) Breast augmentation;

- (iv) Brow lift;
- (v) Calf implants;
- (vi) Cheek/malar implants;
- (vii) Chin/nose implants;
- (viii) Collagen injections;
- (ix) Drugs for hair loss or growth;
- (x) Facial or trunk electrolysis, except for the limited electrolysis described in subsection (6)(d)(vi) of this section;
- (xi) Facial feminization;
- (xii) Face lift;
- (xiii) Forehead lift;
- (xiv) Hair transplantation;
- (xv) Jaw shortening;
- (xvi) Laryngoplasty;
- (xvii) Lip reduction;
- (xviii) Liposuction;
- (xix) Mastopexy;
- (xx) Neck tightening;
- (xxi) Pectoral implants;
- (xxii) Reduction thyroid chondroplasty;
- (xxiii) Removal of redundant skin;
- (xxiv) Rhinoplasty;
- (xxv) Suction-assisted lipoplasty of the waist;
- (xxvi) Trachea shave;
- (xxvii) Voice modification surgery; and
- (xxviii) Voice therapy.